

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**THE ESTATE OF ANGELA ENOCH,
by Roxanne Enoch, Special Administrator;
ASHLEY ENOCH (A Minor) and AMBER
ENOCH (A Minor),**

Plaintiffs,

Case No. 07-C-376

-vs-

**PATRICK A. TIENOR, R.N., Taycheedah Correctional
Institution (TCI); JUDITH M. STEMPER, R.N., TCI;
JESS M. GONZALEZ, Lieutenant, TCI; LORI A. AMEND,
Sergeant, TCI; TONYA R. ALEXANDER-KRINGS, Correctional
Office, TCI; KEVIN L. BATTERMAN, Sergeant, TCI;
KEVIN D.JONES, Correctional Officer, TCI; BARBARA E.
SWEENEY, Correctional Officer, TCI; ANNE BOYLE, Captain,
TCI; LYNDY SCHWANDT, Security Director, TCI;
DEANNE SCHAUB, Deputy Warden, TCI; ANA BOATWRIGHT,
Warden, TCI; HOLLY MEIER, R.N., Health Services Unit Manager,
TCI; ROSE KLEMAN, Psychologist Supervisor, TCI; STEVEN
MERESESS, M.D., Supervising Physician, TCI; JULIA RESCHKE,
M.D., Consulting Psychiatrist, TCI;**

and,

**JAMES GREER, Director, WDOC Bureau of Health Services (BHS);
DAVID BURNETT, M.D., Medical Director, BHS; KEVIN KALLAS,
M.D., Mental Health Director, BHS; DONALD HANDS, PhD.,
Psychology Director, BHS,**

Defendants.

DECISION AND ORDER

The Court is in receipt of a letter from the Guardian Ad Litem (GAL) representing the interests of the minor plaintiffs (Ashley Enoch and Amber Enoch) in the above-captioned matter. The GAL requests an immediate hearing to receive guidance regarding an offer of judgment from the defendants that was made on August 1, 2008. The GAL filed the offer of judgment as an attachment to his letter. In response, the defendants move to strike the offer as improperly filed pursuant to Fed. R. Civ. P. 68.

The GAL represents that the offer is unfair, in part because it was made to all three plaintiffs (including the minor plaintiffs) and it specified how much each plaintiff was to receive, but it was made on the condition that all three parties accept the offer. The Court will not advise the parties on how to deal with an offer of judgment. While Court approval is required to settle the minor's claims, it is not required in the context of an offer of judgment. *See Parsons ex rel. Cabaniss v. American Family Ins. Co.*, 305 Wis. 2d 630, 638-39, 740 N.W.2d 399 (Ct. App. 2007) (Wis. Stat. § 807.10(1) requires court approval for the "compromise or settlement of an action or proceeding to which a minor . . . is a party," not when judgment is taken pursuant to an offer of judgment).

As for the motion to strike, Rule 68(a) provides that "a party defending against a claim may *serve* on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 10 days after being served, the opposing party serves written notice accepting the offer, either party *may then file* the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment" (emphases added). The clear implication is that an offer of judgment must not be filed with the Court unless it is accepted. *See Kason*

v. Amphenol Corp., 132 F.R.D. 197, 197 (N.D. Ill. 1990). The purpose of the prohibition is to prevent undue influence upon the Court and/or potential jury members. *See Hopper v. Euclid Manor Nursing Home, Inc.*, 867 F.2d 291, 294-295 (6th Cir. 1989).

The GAL argues that this rule does not apply to him because he is not a “party” to the litigation. This is a distinction without a difference. The GAL is appointed to represent the best interests of the minor children, who are quite clearly “parties” to this litigation. A party represented by counsel could not evade the rule by arguing that the offer of judgment was filed by his attorney. The Court will strike the offer of judgment.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

1. The GAL’s motion for an immediate hearing and to stay the offer of judgment [D. 157] is **DENIED**; and

2. The defendants’ motion to strike the offer of judgment as enclosures to the GAL’s August 4, 2008 letter [D. 160] is **GRANTED**. The Clerk of Court is directed to strike pages 3-10 in Docket No. 157.

Dated at Milwaukee, Wisconsin, this 6th day of August, 2008.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge